TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 647.

LIEUTENANT COLONEL DANIEL C. STEARNS, APPELLANT,

vs.

BRIGADIER GENERAL GEORGE H. WOOD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OHIO.

FILED OCTOBER 5, 1914.

(24,391)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 18, 1914.

1 UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division, ss:

Record of the proceedings of the District Court of the United States within and for the Eastern Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said Court begun and held at the City of Cleveland, in said District, on the first Tuesday in April, being the 7th day of said month in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America, the one hundred and thirty-eighth, to-wit: on Monday, the 20th day of April, A. D. 1914.

Present: Honorable William L. Day, United States District Judge.

No. 234. Equity.

Lieut. Colonel DANIEL C. STEARNS
vs.
Brigadier General GEORGE H. WOOD.

Said action was commenced on the 20th day of April, A. D. 1914, and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned, and orders of the Court were made and entered in the order and on the dates hereinafter stated, to-wit:

2 (Bill of Complaint, Filed April 20th, 1914.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 234.

Lieut. Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

Bill in Equity.

1. Daniel C. Stearns, a citizen of the State of Ohio and residing at Cleveland, Ohio, brings this his Bill against George H. Wood, a citizen of the State of Ohio and residing at Columbus, Ohio:

3 2. And thereupon your orator complains and says: That on the 6th day of June, 1878, he enlisted as a soldier in the Ohio National Guard; and that thereafter, on the 31st day of January, 1889, he was commissioned an officer therein, by the Governor of the State of Ohio according to law; that the respondent, Brigadier General George H. Wood, is an officer of the Ohio National Guard and is the Adjutant General of the State of Ohio:

neers necessary to balance the complement of infantry necessary for the state purposes aforesaid as provided for by the said Circular No. 8, and that in these several respects said Circular No. 8 is so drastic in its requirements and in excess of regulations with
7 respect to the regular army in its terms and provisions as to be and constitute an ultra vires act upon the part of said respondents.

11. And your orator further avers the fact to be that the said respondent, George H. Wood, the Adjutant General of Ohio, acting under and through the directions contained in the orders and instructions received by him from time to time from respondents through the department of militia affairs with respect to the mobilization of the Ohio National Guard or parts thereof, in the federal service, has issued an order with respect to same, and that said order is in words and figures as follows:

12. "Any furlough or leave of absence which may at any time have been granted to any officer or enlisted man of the Ohio National Guard will, immediately upon any declaration of war or any proclamation by the President of the imminence thereof, be revoked and become null and void; and the officer or soldier shall immediately return to his command unless new leave or furlough shall be granted, and which new leave or furlough will only be granted in the most exceptional cases.

All officers or soldiers of the Ohio National Guard upon receipt of appropriate orders from the President of the United States, at such declaration of war or declaration of the imminence thereof, will mobilize wherever directed within or without the State of Ohio, and within or without the United States of America, and will proceed wherever ordered or directed by the President, whether within or without the United States, as aforesaid. Any officer who shall disobey the provisions of this Section shall in addition to such penalties as a court martial may inflict, be cashiered, and shall be forever disqualified from service in the Ohio National Guard of this State; and any soldier in addition to said penalties afore-
8 said, shall be discharged without honor and be disqualified as aforesaid.

13. And your orator further avers the fact to be that the said order hereinbefore set forth, in other respects fully conceding and recognizing the validity of same, in so far as it directs mobilization beyond or without the limits of the United States, or orders and directs officers and soldiers of the organized militia to proceed beyond the boundaries of the United States, is unconstitutional, without authority of Law, and void, except after they be mustered in as volunteers.

14. And your orator further says that he has been permitted by his superior officers to bring this action in order to obtain a finding and determination by this Honorable Court of the questions of Law therein involved, and herein sought to be determined; in order that the status of complainant and they on whose behalf he sues may be finally established, and in order that if any reorganization of the National Guard may be necessary that same may be seasonably effected in such a manner that the right of relator and they on

whose behalf he sues to lawfully serve within and without the territorial limits of the United States may be preserved and confirmed.

15. And your orator further avers the fact to be that he and a great many officers and soldiers of the National Guard desire to serve in time of war within or without the territorial limits of the United States, but that his and their status as such officers and soldiers of the National Guard is uncertain and undetermined and that he and they are advised and informed and upon the strength of such advice and information he avers the fact to be that they can only lawfully so serve as Volunteers; and that for such complete, final and authoritative determination this action is brought and prosecuted.

9 16. All of which acts, doings and orders of the said respondents are in violation of the rights of complainant, and contrary to equity and good conscience, and tend to the manifest wrongful injury and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless in the premises to do, and by the strict rules of the common law, and given only for relief in a court of equity, where matters of this nature are properly cognizable and relievable:

17. Your orator therefore prays that your Honors grant unto your orator your writ of injunction, commanding the said respondents, and all persons claiming to act under *their* authority or direction or control, to absolutely desist and refrain from attempting to vacate the commission of your orator as a Colonel of the Ohio National Guard, or to reduce your orator in rank to the rank and grade of a Lieutenant Colonel; from putting into effect that portion of Circular No. 8 which provides in detail the number and arm of units of troops which shall constitute brigades, regiments and divisions of the militia and the commissioned and enlisted personnel thereof, and from ordering your orator to attend at a rendezvous of troops beyond the limits of the United States or to proceed beyond said limits, except he be commissioned as an officer of United States Volunteers, and for such other and further relief as equity and justice may require and the court can give.

And so will your orator ever pray.

DANIEL C. STEARNS,
By KEELER, PATTISON,
HASSELMAN & McCONNELL,
His Attorneys.

10 THE UNITED STATES OF AMERICA,
The State of Ohio, County of Cuyahoga, ss:

Personally appeared before me a Notary Public in and for the said County, Daniel C. Stearns, who being duly sworn says that he is the Complainant in the within action that he has read the within Bill of Complaint, and that the averments thereof are true, except such averments as are made upon information and belief and such averments Complainant believes to be true.

DANIEL C. STEARNS.

Sworn to and Subscribed before me and in my presence this 18th day of April, A. D. 1914.

[SEAL.] HARRY E. DAVIS,
Notary Public.

11 (Motion to Dismiss. Filed April 20th, 1914.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

Lieutenant Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

Motion.

Comes now the respondent, Brigadier General George H. Wood, by Wing, Myler & Turney (Hubert J. Turney and Nathan William MacChesney, Chicago, Illinois, of counsel), and respectfully moves the court to dismiss this bill upon the grounds that all of the averments thereof are insufficient to constitute a valid cause of action in equity.

BRIGADIER GENERAL GEORGE H. WOOD,
By WING, MYLER & TURNEY,
His Attorneys,
HUBERT J. TURNEY,
WILLIAM NATHAN MacCHESNEY,
Of Counsel.

12 (Memorandum Opinion. Filed April 20th, 1914.)

In the United States District Court, Northern District of Ohio, Eastern Division.

In Equity. No. 234.

Lieut. Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

DAY, *District Judge:*

The respondent has filed a motion asking that the bill of complaint be dismissed upon the grounds that all of the averments thereof are insufficient to constitute a valid cause of action in equity.

After consideration, the motion will be sustained and the bill dismissed.

Exceptions granted to relator.

DAY, *Judge.*

Cleveland, Ohio, April 20, 1914.

13 (Order Dismissing Bill of Complaint, Entered April 20th, 1914, by Judge Day.)

No. 234. Equity.

Lieutenant Colonel DANIEL C. STEARNS
vs.
Brigadier General GEORGE H. WOOD.

This day this cause came on to be heard on the motion of the defendant that the bill of complaint be dismissed, which motion was argued by counsel, whereupon the Court, being fully advised in the premises, grants said motion and dismisses said bill, for the reason that the averments thereof are insufficient to constitute a valid cause of action in equity. To which ruling of the Court, relator, by his counsel, excepts.

14 (Petition for Appeal, Filed April 20th, 1914.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

234.

Lieutenant Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

Petition for Appeal.

The above named plaintiff, conceiving himself aggrieved by the decree made and entered on the 20th day of April, 1914, in the above entitled cause, whereby his petition filed in said cause was, upon motion, dismissed for want of equity, on the ground that it did not state facts sufficient to constitute a valid cause of action in equity, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

HARVEY R. KEELER,
CHARLES W. PATTISON,
Attorneys for Plaintiff.

Dated this 20th day of April, A. D. 1914.

The foregoing claim of appeal is allowed.

DAY,
District Judge.

15 April 20, 1914.

Issuance and service of citation waived.

WING, MYLER & TURNEY,
Attorneys for Respondent.

HUBERT J. TURNEY,
WILLIAM NATHAN MacCHESNEY,
Of Counsel.

16 (Assignments of Error, Filed April 20th, 1914.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

234.

Lieutenant Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

The plaintiff prays an appeal from the final decree of this court to the Supreme Court of the United States and assigns for error;

First. That the court erred in sustaining the motion to dismiss the bill of the plaintiff herein filed and in dismissing the bill.

Second. The court erred in construing Article I, Section 8, Paragraph 16, of the Constitution of the United States as warranting the action of the defendant in promulgating and enforcing the orders complained of in the plaintiff's petition.

Third. In holding and ruling that under Article I, Section 8, Paragraph 16, of the Constitution of the United States, Congress may provide the number of officers which may be attached to specific units of the organized militia and prescribe their grade.

17 Fourth. In holding and ruling that under the provisions of the Constitution of the United States, the President of the United States, as commander-in-chief, by and through orders issued by the Secretary of War, may lawfully order the organized militia into active service outside of the geographical limits of the United States.

Fifth. In holding and ruling that the various provisions contained in a certain order known and described as Circular No. 8, a copy of which is appended to the plaintiff's petition, are authorized by the Provisions of the Constitution of the United States.

Sixth. In refusing to hold and rule that the various provisions contained in a certain order known and described as Circular No. 8, a copy of which is appended to the plaintiff's petition, are unwarranted and unauthorized by the Provisions of the Constitution of the United States.

HARVEY R. KEELER AND
CHARLES W. PATTISON,
Attorneys for Plaintiff.

18 (Order Allowing Appeal, Entered April 20, 1914, by Judge Day.)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

234.

Lieutenant Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

The court finds, upon proof offered, that the value of the rights in controversy in the above entitled cause is greater than the sum of Three Thousand ($3,000.00) Dollars, and it is ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

The appeal bond herein is fixed at $250.00, the giving of which is made a condition of this appeal.

DAY,
United States District Judge,
Northern District of Ohio.

19 (Bond on Appeal, Filed April 20th, 1914.)

Bond on Writ of Error or Appeal.

Know all Men by these Presents, That we Lieut. Col. Daniel D. Stearns as principal, and The Illinois Surety Co. as sureties, are held and firmly bound unto Brig. Gen. Geo. H. Wood in the full and just sum of Two Hundred and Fifty Dollars to be paid to the said Brig. Gen. Geo. H. Wood certain attorneys, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20" day of April in the year of our Lord one thousand nine hundred and fourteen.

Whereas, lately at a session of the District Court of the United States for the Eastern Division of the Northern District of Ohio in a suit depending in said Court, between Lieut. Col. Daniel C. Stearns vs. Brig. Gen. George H. Wood a decision was rendered against the said Lieut. Col. Daniel D. Stearns and the said Lieut. Col. Daniel C. Stearns having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decision in the aforesaid suit, and a citation directed to the defendant citing and admonishing him to be and appear at a session of the United States Supreme Court to be holden at the city of Washington, D. C., on the — day of —— next.

Now, the condition of the above obligation is such, That if the said Lieut. Col. Daniel C. Stearns shall prosecute his appeal to

effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LIEUT. COL. DANIEL C. STEARNS, [SEAL.]
By His Attorney, HARVEY R. KEELER. [SEAL.]
THE ILLINOIS SURETY CO., [SEAL.]
By HENRY O. WHITE, [SEAL.]
Attorney-in-Fact.

Sealed and Delivered in Presence of

——— ———.
——— ———.

Approved by
DAY, *J.*

[Endorsed:] No. —. ——— ——— v. ——— ———. Bond on Writ of Error or Appeal to the United States Circuit Court of Appeals for the Sixth Circuit.

20 (Precipe for Transcript. Filed April 20th, 1914.)

In the District Court of the United States, Northern District of Ohio, Eastern Division.

No. 234. Equity.

Lieutenant Colonel DANIEL C. STEARNS
vs.
Brigadier General GEORGE H. WOOD.

Precipe.

To the Clerk:

Please prepare transcript of record for the Supreme Court of the United States in the above entitled cause, and include therein, the following papers:

Bill of Complaint.
Motion to dismiss bill of complaint.
Memorandum opinion of the Court.
Order dismissing bill of complaint.
Petition for appeal.
Assignment of errors.
Order allowing appeal.
Bond on appeal.

HARVEY R. KEELER,
CHARLES W. PATTISON,
Attorneys for Complainant-Appellant.

21 (*Certificate of Clerk.*)

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 234. Equity.

Lieutenant Colonel DANIEL C. STEARNS, Complainant,
vs.
Brigadier General GEORGE H. WOOD, Respondent.

NORTHERN DISTRICT OF OHIO:

I, B. C. Miller, Clerk of the District Court of the United States, within and for said district, do hereby certify that the foregoing pages contain a full true and complete copy of the record, including the petition for appeal, assignment of errors, and all proceedings in said cause, in accordance with the precipe for transcript filed by the appellant.

In Testimony whereof, I have hereunto signed my name and affixed the seal of said Court, at Cleveland, Ohio, this 20th day of April, A. D. 1914, and in the 138th year of the Independence of the United States of America.

[Seal of the District Court, Northern Dist. of Ohio.]

B. C. MILLER, *Clerk,*
By R. C. DEAN,
Deputy Clerk.

Endorsed on cover: File No. 24,391. N. Ohio, D. C. U. S. Term No. 647. Lieutenant Colonel Daniel C. Stearns, appellant, vs. Brigadier General George H. Wood. Filed October 5th, 1914. File No. 24,391.